

**FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Multi-Association Group (MAG) Plan for)	CC Docket No. 00-256
Regulation of Interstate Services of Non-Price)	
Cap Incumbent Local Exchange Carriers)	
and Interexchange Carriers)	
)	
Federal State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
Access Charge Reform for Incumbent Local)	CC Docket No. 98-77
Exchange Carriers Subject to Rate-of-Return)	
Regulation)	
)	
Prescribing the Authorized Rate of Return for)	CC Docket No. 98-166
Interstate Services of Local Exchange Carriers)	

**NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
COMMENTS IN OPPOSITION AND SUPPORT OF THE
PETITIONS FOR RECONSIDERATION**

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SUMMARY

The Commission should reject the proposals to artificially reduce per minute access rates further by the creation of a support mechanism for local switching. Rate-of-return carriers should be allowed to recover regulated costs attributable to the provision of interstate access services. There is no basis upon which to equate the rates of high cost carriers with those of lower cost carriers providing services in a different environment and under a different regulatory scheme.

The Commission should also avoid the temptation to treat cost disaggregation and service disaggregation alike. Sections 254 and 214 do not permit automatic “service area” disaggregation of rural telephone company service areas.

Several petitioners argue variously that the creation of portable Interstate Common Line Support (ICLS) as a substitute for the carrier common line charge (CCL) is flawed. The Commission should review its finding that the CCL charges is a subsidy that must be made explicit and portable and reexamine its treatment of the Transport Interconnection Charge (TIC).

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NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
COMMENTS IN OPPOSITION AND SUPPORT OF THE
PETITIONS FOR RECONSIDERATION

The National Telephone Cooperative Association (NTCA)¹ hereby files its comments in opposition to the petitions for reconsideration filed by the Rural Consumer Choice Coalition (RCCC) and the Competitive Universal Service Coalition (CUSC) and comments in support of the petitions for reconsideration filed by the Western Alliance, South Dakota Telecommunications Association (SDTA), Plains Rural Independent Companies (Plains Companies) and the combined petition filed by the National Carrier Exchange Association (NECA), the National Rural Telecom Association (NRTA), the

¹ NTCA is a non-profit corporation established in 1954 and represents 545 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as “rural telephone companies” in the Telecommunications Act of 1996 (Act).

Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the United States Telecom Association (USTA), and comments in partial support of the petition for reconsideration filed by the Alliance of Independent Rural Telephone Companies (AIRTC) in the above-captioned proceeding.²

I. THE FCC SHOULD REJECT RCCC'S PETITION FOR RECONSIDERATION

A. The Commission Should Again Reject RCCC's Proposal To Reduce Rural ILEC Per-Minute Access Rates To 0.95-Cent.

NTCA opposes RCCC's (AT&T, GCI, and Western Wireless) request that the FCC decrease rural incumbent local exchange carrier (ILEC) interstate access rates to AT&T's previously proposed 0.95-cent level.³ RCCC's claim that only when traffic-sensitive support is provided to reduce the total access charges to approximately 0.95-cent per-minute will the rates comply with Section 254(e) and (g) is without merit.⁴

The Commission correctly recognized that AT&T and others have failed to demonstrate a sufficient correlation between the costs of low-density price cap carriers and rate-of-return (ROR) carriers to justify adoption of an overall rate of 0.95-cent per minute for rural carriers.⁵ Rural ILECs serve many study areas with population densities significantly less than 19 access lines per mile, the threshold for the 0.95-cent traffic

They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of the Multi-Group (MAG) Plan for regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers* CC Docket 00-256, *Federal-State Joint Board on Universal service* CC Docket 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation* CC Docket No. 98-77, and *Prescribing the Authorized Rate of Return for Interstate Services for Local Exchange Carriers* CC 98-166, FCC 01-304, (rel. November 8, 2001)(MAG Order).

³ RCCC Petition for Reconsideration, pp. 9-16 (December 28, 2001).

⁴ *Id.*

sensitive rate under the CALLS plan. NTCA's 550 rural ILECs have customer bases ranging from less than 100 to more than 50,000. Half of these rural ILECs have less than 2500 subscribers. Eighty percent serve between 500 and 10,000 subscribers. Indeed, the Rural Task Force (RTF) has determined that the average population density in areas served by rural carriers is approximately 13 persons per square mile.⁶ This necessarily means much higher costs are incurred for providing facilities used for access services.

The FCC also rightly acknowledged that rural ILECs are required to deploy more transmission facilities to serve their customers and typically use smaller switches than do non-rural ILECs serving densely populated areas.⁷ And, rural ILECs have fewer opportunities to achieve cost savings because of their limited size, their lumpy investment patterns, and fluctuating operating expenses.⁸ Based on the record evidence, the Commission correctly concluded that AT&T's proposed 0.95-cent rate is not representative of the costs of rural rate-of-return carriers.

Moreover, the 0.95-cent rate was an agreed upon compromise between the IXC and price cap carriers. In fact the Commission rejected a prescribed traffic sensitive rate. Presubscription of 0.95-cent as a traffic sensitive rate would therefore be totally arbitrary. There is no record to demonstrate that such a rate will recover costs attributable to the traffic sensitive revenue requirement and properly allocated to the interstate jurisdiction.

Furthermore, allowing different access rates based on the different costs of price cap carriers and rate-of-return carriers does not violate sections 254(e) and (g). Nothing in either section 254(e) or 254(g) requires the Commission to lower rate-of-return carrier

⁵ MAG Order at ¶ 86.

⁶ Rural Task Force White Paper 2 at 20.

⁷ MAG Order at ¶ 86.

access rates below cost so that their rates match other larger ILEC costs in order to establish a national average access rate below what would otherwise be possible if the average rate were based on actual costs. To do so would violate the rate averaging requirements in section 254(g) and lead to excessive universal service funding in direct violation of the sufficiency requirement in section 254(e). Charging IXCs access rates based on costs caused by IXCs is consistent with the Commission's principles of cost-based pricing. The Commission should therefore continue to adhere to its principles of cost-causer-based pricing and not allow AT&T and others to avoid paying their share of their costs imposed on rate-of-return carrier networks.

B. RCCC's Argument To Reassign TIC Costs To Common Line Alone, Or To Common Line, Transport, And Special Access Should Be Rejected; The Plains Petition Should Be Considered.

In the MAG Order, the Commission rejected the MAG plan's proposal not to reallocate the transport interconnection charge (TIC). Instead the Commission decided to adopt its own proposal to reform the access rate structure for rate-of-return carriers by eliminating the TIC altogether. It decided to completely reallocate the TIC to other non-traffic-sensitive common line categories and traffic sensitive categories based on the prospective revenue requirements of ROR carriers for all the access categories, including special access. With respect to the traffic sensitive category, the FCC chose to exclude TIC revenues from the calculation because the TIC is being reallocated. In addition, Local Switching Support (LSS) will also be excluded from the calculation because it represents intrastate costs shifted to the interstate jurisdiction as the form of universal

⁸ Id.

service support.⁹ Lastly, for purposes of the Commission's TIC reallocation to the common line side, the projected common line revenue requirement will include Long Term Support (LTS), Interstate Common Line Support (ICLS), and line port costs reallocated to the common line category.¹⁰

In response to the FCC's reallocation, RCCC argues there was no basis to shift some of the TIC costs to traffic sensitive local switching category. In the alternative RCCC argues that the FCC should reassign TIC costs either to the common line categories alone or to the common line, transport, and special access categories, but not to local switching. NTCA disagrees. The Commission should reexamine its treatment of the TIC, but reject the suggestion to assign TIC costs entirely to the common line revenue requirement.

The Plains Companies correctly identify that the "TIC was designed to recover the local transport element that would not be recovered by the actual transport rate elements".¹¹ In its *First Transport Order*, the Commission determined that for ROR carriers the TIC would be computed by subtracting projected entrance facilities, tandem switched transport, direct-trunked transport, and dedicated signaling transport revenues from the Part 69 transport revenue requirement, divided by the projected total transport minutes.¹² In the Order, Commission acknowledged that interstate tandem switching

⁹ MAG Order at ¶¶ 100-102.

¹⁰ The FCC, however, will not include universal service contributions because these costs are not associated with the carrier's own operations that provide interstate access service. MAG Order at ¶ 101.

¹¹ Plains Independent Rural Telephone Companies (Plains) Petition for Reconsideration, p. 4 (Dec. 31, 2001).

¹² *In the Matter of Transport Rate Structure and Pricing, Petition for Waiver of the Transport Rules filed by GTE Service Corporation*, Report and Order and Further Notice National Telephone Cooperative Association 5 CC Dockets 00-256, 96-45, 98-77 and 98-166 February 14, 2002 FCC 01-304

costs are identifiable and that 80 percent of these costs were assigned to the TIC pursuant to the 1992 restructuring of transport.¹³ The TIC also recovers residual costs that are a result of using special access as a surrogate for elements of tandem-switched transport rates.¹⁴ In the MAG Order, however, the Commission's decision to reallocate a large portion the TIC to the common line categories is based on the incorrect statement that it cannot determine the portion of the costs recovered through the TIC that are truly transport related.¹⁵ As the Plains Companies have demonstrated in their petition for reconsideration the Commission can easily identify and track transport related costs included in the TIC.¹⁶ The FCC decision in this proceeding to reallocate the TIC based on a weighted average formula with no relation to cost-causation should be abandoned. The reallocation in some cases will shift more than 50 percent of a carrier's TIC costs to the common line categories resulting in implicit subsidies in the non-traffic sensitive common line elements and ICLS in violation of section 254(e). NTCA therefore agrees with the Plains Companies Petition for Reconsideration and urges the Commission to reexamine its treatment of the TIC.

C. The RCCC's Proposal To Shift The Information Surcharge To The Common Line Elements Should Also Be Denied.

The Commission should also reject RCCC's proposal to transfer recovery of the information surcharge into the common line elements.¹⁷ Shifting the information

of Proposed Rulemaking, CC Docket Nos. 91-213 ("First Transport Order") 7 FCC Rcd 7006, 7038, ¶ 61 (rel. October 16, 1992).

¹³ Plains Petition for Reconsideration, p. 8, citing *First Transport Order*, 7 FCC Rcd 7018-7019, ¶ 24.

¹⁴ Plains Petition at 5.

¹⁵ MAG Order at ¶ 101.

¹⁶ Plains Petition for Reconsideration, pp. 4-9 (Dec. 31, 2001).

¹⁷ RCCC Petition for Reconsideration, pp. 19-21 (Dec. 28, 2001).

surcharge into the common line elements would create another new implicit subsidy in violation of section 254(e). Unlike the price cap carriers and IXC's that voluntarily agreed to the transfer in the CALLS plan, rate-of-return carriers in this proceeding have consistently opposed the transfer of this cost to the common line revenue requirement.

Since 1985, the Commission permitted rural ILEC's to recover certain information costs through a usage-sensitive "information surcharge." Since that time, the FCC has had numerous occasions to examine the continuing viability of the surcharge and has continuously reaffirmed the use of an information surcharge for interstate directory related cost recovery. Nothing has changed since these reviews. The majority of NECA pool members still do not provide Interstate Directory Assistance (IDA) trunks. Without the surcharge rural LEC's would incur enormous costs to develop a new rate element, to develop systems to track the element, and to modify billing systems. RCCC has provided no new evidence to justify imposing this additional cost and burden on rural rate-of-return carriers. The Commission should therefore continue to reject RCCC's proposal.

D. The Commission Should Reject RCCC's Proposal To Move The Recovery Of Marketing Costs To The Common Line.

In the MAG order the Commission concluded that if it required rate-of-return carriers to recover marketing costs in the common line, such a requirement would result in marketing costs being recovered from ICLS because the SLC rates for many rate-of-return carriers will likely reach their caps once the carrier common line charge is completely phased out in July 2003.¹⁸ Recovering marketing cost through the ICLS therefore would create an implicit subsidy in the ICLS resulting in yet another violation

¹⁸ MAG Order at ¶ 118.
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of section 254(e). NTCA agrees. The Commission is seeking to remove implicit subsidies in this proceeding not create new ones. The small amount of marketing costs in local switching and transport does not justify reassigning the cost to the common line category. Accordingly, the Commission should reject RCCC's proposal to shift the recovery of ROR carrier marketing expenses to the common line.

II. THE FCC SHOULD REJECT CUSC'S PETITION FOR RECONSIDERATION

NTCA opposes CUSC's petition. CUSC requests that the Commission equate service area disaggregation with cost disaggregation. Cost zones and service areas serve different purposes. Section 214(e)(5) specifically defines the "service area" of a rural telephone company as its "study area." The statute does not permit the designation of more than one eligible telecommunications carrier in a rural telephone company's study area without a specific public interest finding. The automatic disaggregation of a rural service area would defeat the purpose of Section 214(e)(5) by permitting ETCs to cream skim the most lucrative customers in rural areas. This directly undermines the statutory scheme, which contemplates a specific finding of the public interest before any additional ETC is designated in a rural company's study area. Any automatic designation would also usurp state authority over designations. The Commission and the states have a process for making exceptions to the study area requirements of Section 214. That process requires each State and the Commission to take account of the Federal-State Joint Board recommendations before changing the definition of "service area" for a rural company. The Commission should adhere to that procedure and deny CUSC's request.

CUSC also asks that the Commission adopt a cap on the ICLS. The ICLS is a residual that recovers the common line revenue requirements of rate of return carriers. As

NTCA pointed out in its Petition for Reconsideration (PFR), this mechanism should not be available to ETCs because it replaces a rate element that recovers actual costs associated with the provision of non-traffic sensitive facilities. It should also not be capped because it is designed as a residual. A cap would require rate restructure so that remaining rate elements could recover the common line revenue requirement. The Commission cannot legitimately defeat ROR carrier's ability to recover regulated costs that are properly allocated to the interstate jurisdiction under existing Separations rules.¹⁹ As NTCA explained in its PFR, there is a growing concern about the administration and size of universal service support. Portability and the Commission's definition of competitive neutrality are a root cause of the potential ballooning of support. As NTCA, Western Alliance and SDTA stated in their PFRs, the Commission should address portability before implementing ICLS. This will allow it to prevent out of hand growth, gaming and the continuation of uneconomic incentives.²⁰ A cap alone does not address the more serious issue of whether Section 254(e) can be enforced when ICLS is available to carriers that do not provide loops and can make no showing that their costs are in any way related to rate of return carrier's common line costs.

III. VARIOUS PETITIONERS HAVE SHOWN THAT THE COMMISSION ACTED ARBITRARILY IN CREATING A PORTABLE ICLS FUND TO REPLACE THE CCL

NTCA and the Western Alliance both separately requested that the Commission review and revise its rules that make ICLS portable to competitive local exchange

¹⁹ See generally the Petitions for Reconsideration filed by the AIRTC and Plains Telephone Companies.

carriers (CETCs) based on the per-line costs incurred by ROR ILECs.²¹ The new ICLS mechanism will bestow unwarranted financial windfalls upon CETCs that do not offer substantially similar exchange access services, that do not construct and maintain substantially similar common line facilities, and that do not bear substantially similar costs as the underlying rate of return carriers. These windfalls will be particularly large and unwarranted with respect to wireless CETCs that resell their own long distance toll services and that elect not to offer equal access and other exchange access services.

The FCC's new ICLS will not ensure compliance with Section 254(e) because there is no means of determining how unregulated CETCs, unlike ROR carriers or other tariff filing entities, use their universal service support. Without a verification mechanism that compares the unregulated CETC's costs of providing service to the amount of ICLS received, the FCC cannot determine whether the ICLS disbursements to CETCs are being used for the purpose intended or whether they comply with sufficiency provisions contained in Section 254(e). The current rules will promote artificial and non-economic competition in the short term that will dwindle or disappear once the portable ICLS is reduced or terminated. NTCA therefore supports the Western Alliance's requests that the Commission review and revise its rules to require all CETCs seeking ICLS to demonstrate their eligibility to receive ICLS and show that supports meets the use and sufficiency requirements contained in Section 254(e).

Both SDTA and AIRTC claim that the MAG Order's elimination of the carrier common line (CCL) charge is arbitrary and capricious because there is no record to

²¹ See NTCA's Petition for Reconsideration filed on December 31, 2001 and Western Alliance's Petition for Reconsideration also filed on December 31, 2001.
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support the conclusion that the CCL charge recovers a subsidy.²² The result is particularly egregious for companies with very high common line costs.²³

NTCA agrees that the Commission has not established that the charge constitutes a subsidy. The Commission should therefore reexamine its decision to determine whether the elimination of the CCL is appropriate for these companies. The CCL charge recovers the residual interstate portion of common line costs associated with the facilities used in the provision of access services.²⁴ The Commission could accept a different rate design that permits recovery of these residual costs from the IXC's that are cost causers and avoid what it characterizes as the subsidy from large volume users to low volume users.²⁵ As AIRTC points out, consideration should be given to a rate design that recovers at least a portion of the interstate costs of a rural rate-of-return carrier from the access rates assessed to IXC's.²⁶

IV. CONCLUSION

The Commission should reject the petitions for reconsideration filed by RCCC and CUSC and reconsider its decision to establish a portable ICLS mechanism as the

²² SDTA Petition for Reconsideration at 3-4, AIRTC Petition for Reconsideration at 19-21.

²³ See SDTA Petition for Reconsideration, pp. 7-8, and Exhibit 2. (The percentage of ICLS to total interstate access revenues can range from 21.6% to 40.0% according a study conducted by the Martin Group, a South Dakota-based telecommunications consulting, engineering, and data processing firm).

²⁴ NTCA Petition for Reconsideration at 4-5.

²⁵ For example, the MAG proponents suggested that the Commission allow ROR carriers to recover residual common line costs through the PICC, a flat charge imposed on IXC's. In Southwestern Bell Telephone Co. V. FCC, 153 F.3d 523, 539 (U.S.C.A. 8th 1998), the Court found that the Commission had the discretion to retain the CCL charge while gradually increasing the flat-rated PICC charge imposed on IXC's over time.

²⁶ AIRTC Petition for Reconsideration at 21.

exclusive substitute for the ROR carriers' recovery of their residual common line revenue requirements. The Commission should also review its finding that the CCL charge is an

implicit subsidy that must be made explicit and portable. Lastly, the FCC should reexamine its treatment of the TIC.

Respectfully submitted,

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February 14, 2002

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments in Opposition and Support of the Petitions for Reconsideration of the National Telephone Cooperative Association in CC Docket No. 00-256, FCC 01-304 was served on this 14th of February 2002 by first-class, U.S. Mail, postage prepaid, to the following persons

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